



DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-810]

Silicon Metal from Australia: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of silicon metal from Australia are being, or are likely to be, sold in the United States at less than fair value (LTFV). In addition, we determine that critical circumstances exist with respect to certain imports of the subject merchandise. The period of investigation (POI) is January 1, 2016, through December 31, 2016. The final dumping margins of sales at LTFV are listed below in the ‘Final Determination’ section of this notice.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Brian Smith or Denisa Ursu, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 and (202) 482-2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2017, Commerce published the *Preliminary Determination* of sales at LTFV of silicon metal from Australia.¹ Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 27, 2018.²

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.³

Scope of the Investigation

The product covered by this investigation is silicon metal from Australia. For a full description of the scope of this investigation, see the "Scope of the Investigation" in Appendix I of this notice.

Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, Commerce issued a Preliminary

¹ See *Silicon Metal from Australia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 47471 (October 12, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

³ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Silicon Metal from Australia," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope Decision Memorandum⁴ to address these comments. Since the *Preliminary Determination*, Globe Specialty Metals, Inc. (the petitioner), submitted a case brief and interested parties submitted rebuttal briefs concerning the limits to silicon content as specified in the scope.⁵

Commerce reviewed these briefs, considered the arguments therein, and is not making any additional changes to the scope of the investigation. For further discussion, see Commerce's Final Scope Decision Memorandum.⁶ The scope in Appendix I reflects the final scope language.

Analysis of Comments Received

All issues raised in the petitioner's case briefs⁷ are addressed in either the Final Scope Decision Memorandum or the Issues and Decision Memorandum accompanying this notice, which is hereby adopted by this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit, Room B-8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

⁴ See Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 29, 2017 (Preliminary Scope Decision Memorandum).

⁵ These parties include Wacker Chemicals Norway A.S., Elkem AS, and the petitioner.

⁶ See Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Final Scope Comments Decision Memorandum," dated February 27, 2018 (Final Scope Decision Memorandum).

⁷ Only the petitioner submitted case briefs in this investigation.

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we informed Simcoa Operations Pty Ltd. (Simcoa),⁸ that we intended to verify its submitted sales and cost information.⁹ However, on October 12, 2017, Simcoa notified Commerce that it will no longer participate in this investigation.¹⁰ As a result, Commerce was unable to verify Simcoa's information as required under section 782(i)(1) of the Act.

Changes Since the Preliminary Determination

Based on Simcoa's decision to no longer participate in this investigation and our analysis of the comments received, we find that Simcoa has been uncooperative in this investigation and that facts available with an adverse inference with respect to Simcoa is warranted in the final determination in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For further discussion, see "Use of Adverse Facts Available" section below and the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances in Part

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to imports of silicon metal from Simcoa, and do not exist with respect to companies covered by the "all others" rate.¹¹ Commerce received no comments regarding this issue after the Preliminary Determination. Therefore, for the final determination, we continue to find that, in accordance with section 735(a)(3) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to subject merchandise produced or exported by Simcoa, but do not exist with respect to companies covered by the "all others" rate.

⁸ Simcoa is the sole mandatory respondent in this case.

⁹ See *Preliminary Determination*, 82 FR at 47472.

¹⁰ See Letter from Simcoa to the U.S. Secretary of Commerce, "Silicon Metal from Australia: Withdrawal from Participation as a Respondent," dated October 12, 2017.

¹¹ See Preliminary Decision Memorandum, at 14-16. Note: the *Preliminary Determination*, at 82 FR 47472, incorrectly stated that critical circumstances exist for imports of the subject merchandise produced or exported by Simcoa and all others. It should have stated that critical circumstances exist for imports of the subject merchandise produced or exported by Simcoa only, consistent with the analysis in the Preliminary Decision Memorandum, at 14-16.

Use of Adverse Facts Available

The mandatory respondent Simcoa failed to allow its sales and cost data to be verified by Commerce. Therefore, we find that the application of facts available with an adverse inference with respect to Simcoa is warranted in the final determination. In applying total adverse facts available, Commerce has assigned to Simcoa's exports of the subject merchandise the rate of 51.28 percent, which is the highest rate calculated in the Petition.¹² For further discussion, see the Issues and Decision Memorandum at Comments 1 and 2.

All-Others Rate

Section 735(c)(5)(B) of the Act provides where, as here, the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or based entirely on facts available pursuant to section 776 of the Act, Commerce may use any reasonable method to establish the all others rate for exporters and producers not individually investigated. Where the sole individually investigated respondent's margin is based on total AFA under section 776 of the Act, our practice under these circumstances has been to assign as the all others rate the simple average of the margins in the Petition,¹³ which we have done for this final determination.¹⁴

Final Determination

The final weighted-average dumping margins are as follows:

Exporter	Dumping Margin (Percent)
Simcoa Operations Pty Ltd.	51.28

¹² See Petitions for the Imposition of Antidumping and Countervailing Duties: Silicon Metal from Australia, Brazil, Kazakhstan, and Norway, dated March 8, 2017 (the Petition), Volume II at 5.

¹³ See, e.g., *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016), and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 5508 (January 30, 2008) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 19814 (April 11, 2008)).

¹⁴ See the Petition, Volume II, at Exhibit AU-AD 1.

All Others	41.73
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Disclosure

The weighted-average dumping margin assigned to Simcoa in the final determination of this investigation is the highest rate calculated in the Petition and the all others rate is the simple average of the margins in the Petition. Neither the dumping margin assigned to Simcoa nor the margins used to calculate the all others rate are proprietary in nature and they are considered to be public information (in both the Petition and in the Australia AD Initiation Checklist).¹⁵ As the rate assigned to Simcoa and the all others rate are based on margins in the Petition, no disclosure of calculations is necessary for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of silicon metal from Australia, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after October 12, 2017, the date of publication in the *Federal Register* of the affirmative *Preliminary Determination*.

For entries made by Simcoa, in accordance with section 735(c)(4)(A) of the Act, because we continue to find that critical circumstances exist, we will instruct CBP to continue to suspend liquidation of all appropriate entries of silicon metal from Australia which were entered, or withdrawn from warehouse, for consumption on or after July 14, 2017, which is 90 days prior to the date of publication of the *Preliminary Determination*. Additionally, for entries made by

¹⁵ See the Petition, Volume II at 5 and 48; see also *Initiation Notice* and accompanying Antidumping Duty Investigation Initiation Checklist: Silicon Metal from Australia (Australia AD Initiation Checklist), at pages 5-9.

companies covered by the “all others” rate, in accordance with section 735(c)(4)(B) of the Act, because we continue to find that critical circumstances do not exist with regard to imports from all other producers and exporters of silicon metal from Australia, we will instruct CBP to continue to suspend liquidation of all appropriate entries of silicon metal from Australia which were entered, or withdrawn from warehouse, for consumption on or after October 12, 2017, which is the date of publication of the *Preliminary Determination*. Pursuant to section 735(c)(1) of the Act, we will instruct CBP to require a cash deposit equal to the margins indicated in the chart above.¹⁶ These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce’s final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of silicon metal from Australia no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

¹⁶ See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: February 27, 2018.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum:

- I. Summary
- II. Background
- III. Discussion of the Issues:
 - Comment 1: Application of Facts Available for Simcoa
 - Comment 2: Appropriate Rate for Use as Adverse Facts Available
- IV. Recommendation

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